

amounts by the Director will conserve congressional time and yet assure that the relative dollar amounts used in the bill are maintained. Changes in the cost of living should be a significant, but not necessarily the only, factor considered by the Director. The fact that there has been an increase in the cost of living does not necessarily mean that an adjustment of dollar amounts would be needed or warranted.

HOUSE REPORT NO. 95-595

This section requires the Judicial Conference to report to the Congress every four years after the effective date of the bankruptcy code any changes that have occurred in the cost of living during the preceding four years, and the appropriate adjustments to the dollar amounts in the bill. The dollar amounts are found primarily in the exemption section (11 U.S.C. 522), the wage priority (11 U.S.C. 507), and the eligibility for chapter 13 (11 U.S.C. 109). This section requires that the Conference recommend uniform percentage changes in these amounts based solely on cost of living changes. The dollar amounts in the bill would not change on that recommendation, absent Congressional veto. Instead, Congress is required to take affirmative action, by passing a law amending the appropriate section, if it wishes to accomplish the change.

If the Judicial Conference has policy recommendations concerning the appropriate dollar amounts in the bankruptcy code based other than on cost of living considerations there are adequate channels through which it may communicate its views. This section is solely for the housekeeping function of maintaining the dollar amounts in the code at fairly constant real dollar levels.

AMENDMENTS

1994—Pub. L. 103-394 designated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-394 effective Oct. 22, 1994, and not applicable with respect to cases commenced under this title before Oct. 22, 1994, see section 702 of Pub. L. 103-394, set out as a note under section 101 of this title.

ADJUSTMENT OF DOLLAR AMOUNTS

By notice dated Feb. 3, 1998, 63 F.R. 7179, the Judicial Conference of the United States adjusted the dollar amounts in provisions specified in subsec. (b) of this section, effective Apr. 1, 1998, as follows:

11 U.S.C.	Dollar amount to be adjusted	New (adjusted) dollar amount
Section 109(e)—allowable debt limits for filing bankruptcy under Chapter 13.	\$250,000 (each time it appears). 750,000 (each time it appears).	\$269,250 (each time it appears). 807,750 (each time it appears).
Section 303(b)—minimum aggregate claims needed for the commencement of an involuntary bankruptcy:		
(1)—in paragraph (1)	10,000	10,775.
(2)—in paragraph (2)	10,000	10,775.
Section 507(a)—priority claims:		
(1)—in paragraph (3)	4,000	4,300.
(2)—in paragraph (4)(B)(i)	4,000	4,300.
(3)—in paragraph (5)	4,000	4,300.
(4)—in paragraph (6)	1,800	1,950.
Section 522(d)—value of property exemptions allowed to the debtor:		
(1)—in paragraph (1)	15,000	16,150.
(2)—in paragraph (2)	2,400	2,575.
(3)—in paragraph (3)	400	425.
	8,000	8,625.
(4)—in paragraph (4)	1,000	1,075.
(5)—in paragraph (5)	800	850.
	7,500	8,075.

11 U.S.C.	Dollar amount to be adjusted	New (adjusted) dollar amount
(6)—in paragraph (6)	1,500	1,625.
(7)—in paragraph (8)	8,000	8,625.
(8)—in paragraph (11)(D)	15,000	16,150.
Section 523(a)(2)(C)—“luxury goods and services” or cash advances obtained by the consumer debtor within 60 days before the filing of a bankruptcy petition, which are considered nondischargeable.	1,000 (each time it appears).	1,075 (each time it appears).

§ 105. Power of court

(a) The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

(b) Notwithstanding subsection (a) of this section, a court may not appoint a receiver in a case under this title.

(c) The ability of any district judge or other officer or employee of a district court to exercise any of the authority or responsibilities conferred upon the court under this title shall be determined by reference to the provisions relating to such judge, officer, or employee set forth in title 28. This subsection shall not be interpreted to exclude bankruptcy judges and other officers or employees appointed pursuant to chapter 6 of title 28 from its operation.

(d) The court, on its own motion or on the request of a party in interest, may—

(1) hold a status conference regarding any case or proceeding under this title after notice to the parties in interest; and

(2) unless inconsistent with another provision of this title or with applicable Federal Rules of Bankruptcy Procedure, issue an order at any such conference prescribing such limitations and conditions as the court deems appropriate to ensure that the case is handled expeditiously and economically, including an order that—

(A) sets the date by which the trustee must assume or reject an executory contract or unexpired lease; or

(B) in a case under chapter 11 of this title—

(i) sets a date by which the debtor, or trustee if one has been appointed, shall file a disclosure statement and plan;

(ii) sets a date by which the debtor, or trustee if one has been appointed, shall solicit acceptances of a plan;

(iii) sets the date by which a party in interest other than a debtor may file a plan;

(iv) sets a date by which a proponent of a plan, other than the debtor, shall solicit acceptances of such plan;

(v) fixes the scope and format of the notice to be provided regarding the hearing on approval of the disclosure statement; or

(vi) provides that the hearing on approval of the disclosure statement may be combined with the hearing on confirmation of the plan.

(Pub. L. 95-598, Nov. 6, 1978, 92 Stat. 2555; Pub. L. 98-353, title I, § 118, July 10, 1984, 98 Stat. 344; Pub. L. 99-554, title II, § 203, Oct. 27, 1986, 100 Stat. 3097; Pub. L. 103-394, title I, § 104(a), Oct. 22, 1994, 108 Stat. 4108.)

HISTORICAL AND REVISION NOTES

SENATE REPORT NO. 95-989

Section 105 is derived from section 2a (15) of present law [section 11(a)(15) of former title 11], with two changes. First, the limitation on the power of a bankruptcy judge (the power to enjoin a court being reserved to the district judge) is removed as inconsistent with the increased powers and jurisdiction of the new bankruptcy court. Second, the bankruptcy judge is prohibited from appointing a receiver in a case under title 11 under any circumstances. The bankruptcy code has ample provision for the appointment of a trustee when needed. Appointment of a receiver would simply circumvent the established procedures.

This section is also an authorization, as required under 28 U.S.C. 2283, for a court of the United States to stay the action of a State court. As such, *Toucey v. New York Life Insurance Company*, 314 U.S. 118 (1941), is overruled.

REFERENCES IN TEXT

The Federal Rules of Bankruptcy Procedure, referred to in subsec. (d)(2), are set out in the Appendix to this title.

AMENDMENTS

1994—Subsec. (d). Pub. L. 103-394 added subsec. (d).

1986—Subsec. (a). Pub. L. 99-554 inserted at end “No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.”

1984—Subsecs. (a), (b). Pub. L. 98-353, § 118(1), struck out “bankruptcy” before “court”.

Subsec. (c). Pub. L. 98-353, § 118(2), added subsec. (c).

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-394 effective Oct. 22, 1994, and not applicable with respect to cases commenced under this title before Oct. 22, 1994, see section 702 of Pub. L. 103-394, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Effective date and applicability of amendment by Pub. L. 99-554 dependent upon the judicial district involved, see section 302(d), (e) of Pub. L. 99-554, set out as a note under section 581 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective July 10, 1984, see section 122(a) of Pub. L. 98-353, set out as an Effective Date note under section 151 of Title 28, Judiciary and Judicial Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 106 of this title; title 26 section 7433.

§ 106. Waiver of sovereign immunity

(a) Notwithstanding an assertion of sovereign immunity, sovereign immunity is abrogated as to a governmental unit to the extent set forth in this section with respect to the following:

(1) Sections 105, 106, 107, 108, 303, 346, 362, 363, 364, 365, 366, 502, 503, 505, 506, 510, 522, 523, 524,

525, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 722, 724, 726, 728, 744, 749, 764, 901, 922, 926, 928, 929, 944, 1107, 1141, 1142, 1143, 1146, 1201, 1203, 1205, 1206, 1227, 1231, 1301, 1303, 1305, and 1327 of this title.

(2) The court may hear and determine any issue arising with respect to the application of such sections to governmental units.

(3) The court may issue against a governmental unit an order, process, or judgment under such sections or the Federal Rules of Bankruptcy Procedure, including an order or judgment awarding a money recovery, but not including an award of punitive damages. Such order or judgment for costs or fees under this title or the Federal Rules of Bankruptcy Procedure against any governmental unit shall be consistent with the provisions and limitations of section 2412(d)(2)(A) of title 28.

(4) The enforcement of any such order, process, or judgment against any governmental unit shall be consistent with appropriate nonbankruptcy law applicable to such governmental unit and, in the case of a money judgment against the United States, shall be paid as if it is a judgment rendered by a district court of the United States.

(5) Nothing in this section shall create any substantive claim for relief or cause of action not otherwise existing under this title, the Federal Rules of Bankruptcy Procedure, or nonbankruptcy law.

(b) A governmental unit that has filed a proof of claim in the case is deemed to have waived sovereign immunity with respect to a claim against such governmental unit that is property of the estate and that arose out of the same transaction or occurrence out of which the claim of such governmental unit arose.

(c) Notwithstanding any assertion of sovereign immunity by a governmental unit, there shall be offset against a claim or interest of a governmental unit any claim against such governmental unit that is property of the estate.

(Pub. L. 95-598, Nov. 6, 1978, 92 Stat. 2555; Pub. L. 103-394, title I, § 113, Oct. 22, 1994, 108 Stat. 4117.)

HISTORICAL AND REVISION NOTES

LEGISLATIVE STATEMENTS

Section 106(c) relating to sovereign immunity is new. The provision indicates that the use of the term “creditor,” “entity,” or “governmental unit” in title 11 applies to governmental units notwithstanding any assertion of sovereign immunity and that an order of the court binds governmental units. The provision is included to comply with the requirement in case law that an express waiver of sovereign immunity is required in order to be effective. Section 106(c) codifies *In re Gwilliam*, 519 F.2d 407 (9th Cir., 1975), and *In re Dolard*, 519 F.2d 282 (9th Cir., 1975), permitting the bankruptcy court to determine the amount and dischargeability of tax liabilities owing by the debtor or the estate prior to or during a bankruptcy case whether or not the governmental unit to which such taxes are owed files a proof of claim. Except as provided in sections 106(a) and (b), subsection (c) is not limited to those issues, but permits the bankruptcy court to bind governmental units on other matters as well. For example, section 106(c) permits a trustee or debtor in possession to assert avoiding powers under title 11 against a governmental unit; contrary language in the House report to H.R. 8200 is thereby overruled.